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No. 80-931

In the Supreme Court of the United States

OCTOBER TERM, 1980

CHARLES D. BONANNO LINEN SERVICE, INC.,
PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

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1. Petitioner was a member of the New England Linen Supply Association, which had for several years bargained with Teamsters Local Union No. 25 on a multiemployer basis in an Association-wide unit. Petitioner participated in negotiations for a new labor contract in March and April 1975. By May, negotiations reached an impasse over the issue of employee compensation. On June 23, 1975, petitioner's employees struck in support of the Union demands, and the other Association members locked out their employees. Negotiations continued through the summer, but failed to break the impasse. In November 1975, petitioner notified the Union and the other Association members that the Association no longer had authority to bargain on petitioner's behalf. The remaining Association members thereupon terminated their lockout. The Union

continued its negotiations with the Association, eventually reaching agreement on a new contract dated April 23, 1976. (Pet. App. 19-21.)

The Union filed unfair labor practice charges on April 9, 1976, challenging petitioner's attempted withdrawal from the multiemployer unit. On April 29, 1976, the Union informed petitioner that it had never consented to the withdrawal and accordingly considered petitioner bound by the new agreement. Petitioner disagreed. (Pet. App. 21.)

The Board in *Retail Associates, Inc.*, 120 N.L.R.B. 384 (1958), prescribed guidelines to govern withdrawal from multiemployer bargaining units. Under these rules, an employer or union is free to withdraw from the multiemployer unit for any reason prior to the date set for renegotiation of the existing contract or the date on which negotiations actually commence, provided adequate notice is given. Once negotiations for a new contract have begun, however, a party may withdraw only if "mutual consent" is given or if "unusual circumstances" exist. Because the Board does not view an impasse in collective bargaining negotiations as an "unusual circumstance" justifying a unilateral withdrawal from the bargaining unit, the Board in this case concluded that petitioner had engaged in unfair labor practices within the meaning of Section 8(a)(5) of the National Labor Relations Act, 29 U.S.C. 158(a)(5). (Pet. App. 38-52.) The court of appeals granted enforcement (*id.* at 37).

2. The court of appeals correctly concluded that the Board's holding constitutes a reasonable accommodation of "conflicting legitimate interests" (*NLRB* v. *Truck Drivers Local Union No. 449*, 353 U.S. 87, 96 (1957)), *i.e.*, the interest of the individual employer in being free to bargain for itself and the public interest in maintaining the stability of the multiemployer unit. For, as the Board

explained, impasse is not an unusual occurrence but rather a foreseeable stage in the bargaining process—akin to a hiatus in negotiations. Moreover, a rule permitting unilateral withdrawal upon impasse would permit a member of the multiemployer unit to avoid its bargaining obligation by creating an impasse whenever it was dissatisfied with the impending agreement. (Pet. App. 41-42, 47.)

However, the decision of the court of appeals in this case is in direct conflict with decisions of the Ninth Circuit in *H & D, Inc.* v. *NLRB*, 633 F.2d 139 (1980), and the Third Circuit in *NLRB* v. *Beck Engraving Co.*, 522 F. 2d 475 (1975), which hold that impasse does permit unilateral withdrawal from a multiemployer unit.[1] See also *NLRB* v. *Associated Shower Door Co.*, 512 F. 2d 230 (9th Cir.), cert. denied, 423 U.S. 893 (1975); *NLRB* v. *Independent Ass'n of Steel Fabricators, Inc.*, 582 F. 2d 135 (2d Cir. 1978), cert. denied, 439 U.S. 1130 (1979).[2] The issue is a recurrent one in the administration of the Act. It is important that this Court resolve the conflict among the circuits, to eliminate the uncertainty that exists regarding the rights of the many employers and unions across the nation who bargain on a multiemployer basis.[3]

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[1]We are considering whether to file a petition for a writ of certiorari seeking review of the decision in *H & D, Inc.* v. *NLRB, supra.*

[2]Although the Fifth Circuit initially concluded that an impasse justifies employer withdrawal from the bargaining unit (*NLRB* v. *Hi-Way Billboards, Inc.*, 500 F. 2d 181 (1974)), it has recently reconsidered that position, and now has upheld the Board's position. *NLRB* v. *Marine Machine Works, Inc.*, No. 79-3938 (5th Cir. Jan. 30, 1981).

[3]A survey of major collective bargaining agreements—those covering 1,000 or more employee—in effect on January 1, 1979, disclosed that approximately 42% of such agreements, affecting approximately 42% of the total employees, were with multiemployer units: of 1,536 major agreements covering 7,540,550 employees, 648 agreements covering 3,238,400 employees were with multiemployer bargaining units. United States Department of Labor, Bureau of Labor Statistics, Bulletin No.

For these reasons, the Board does not oppose the granting of the present petition.

Respectfully submitted.

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20-65, "Characteristics of Major Collective Bargaining Agreements —January 1, 1978," at 12, table 1.8 (1980). See also *NLRB* v. *Truck Drivers Local Union No. 449, supra,* 353 U.S. at 94-95.